IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

1. CIVIL WRIT No. 1015 of 1994

DUNGAR SINGH
V/S
STATE & ORS

2. CIVIL WRIT No. 2453 of 1994

GRAM PANCHAYAT GUDA SOORSINGH
V/S
STATE & ORS

Mr. MS SINGHVI, for the petitioners Dungar Singh & Ors.
Mr. VIJAY BISHNOI, for Gram Panchayat Guda Soorsingh.
Mr. MC BHOOT, for the private respondents.
Mrs. RR KANWAR, AGA for the State.

Date of Order : 9.3.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Both these petitions have been filed by the two sets of petitioners against the common judgment of the Additional Collector, Pali dt. 25.1.1994 passed in revision filed against the order of the Gram Panchayat dt. 1.5.1990, whereby the Gram Panchayat had ordered removal of the possession of the private respondents, finding it to be encroachment. The learned Additional Collector in the aforesaid judgment has noticed the contention of the revisionists, that they are in possession for the last ten years, and despite order of status quo their possession has been removed, and that in the order passed by the Gram

Panchayat no reference has been made to the application of the revisionist for the grant of Patta, nor of the money deposited for preparation of site plan, nor about the site inspection note prepared by the Panchas, and simply after recording the statement of some witnesses, the order has been passed. Noticing these contentions, it has been held, that from the above discussion it appears, that the Gram Panchayat has not taken any proceeding with respect to the application of the revisionists for grant of Patta, and the revisionists have produced a Parcha signed by Up Sarpanch, and seven more persons, including Ward Pancha, wherein the revisionists' stones are shown to have been lying for the last ten years, and no objection is expressed if Patta is granted. With these findings the revision has been allowed, the order of the Gram Panchayat dt. 1.5.1990 has been set aside, and the matter has been sent back to the Gram Panchayat, with a direction to decide the revisionists' application for grant of Patta in accordance with rules, and to issue the sale deed, and has also directed to return the material taken by the Gram Panchayat in possession, despite stay order.

Aggrieved of this order Writ No. 1015 has been filed by the persons who filed application before Gram Panchayat for removal of encroachment; while Writ No. 2453 has been filed by the Gram Panchayat.

It is contended by the learned counsel for the Gram Panchayat, that even according to the present private respondents they were in possession since 1982 only, and being trespasser since 1982, they have no right whatever under the Rajasthan Panchayat Act 1953, as it was then in force, read with Rajasthan Panchayat (General) Rules, 1961 to get the Patta of the land in question, and therefore, the learned Additional Collector was in error in directing the Panchayat to grant Patta. It was also submitted, that as a matter of fact no such application of the private respondents was at all pending with the Gram Panchayat, for grant of any Patta, nor any such application was filed.

The matter was heard for quite some time on 7.3.2007, and since it transpired that the order of the learned Additional Collector proceeds on the basis of finding fault with Panchayat in not deciding the application of the private respondents for grant of Patta, the learned counsel for Gram Panchayat was verbally directed to make available for perusal of the Court the original record of the Gram Panchayat. Thereupon Mr. Bishnoi made available for perusal of the Court, the file of Gram Panchayat, being file No. 5 of 1989-90. Mr. Bhoot was also allowed to go through that file, and since in that file, there is no reference of any such application for grant of Patta, or the things noticed by the learned Additional Collector in its impugned order, Mr. Bhoot was

asked to give details as to when the application for grant of Patta was filed, and as to when the amount for preparation of site plan etc. were deposited, but then he was unable to inform the dates.

From perusal of the memo of revision, filed on behalf of the present private respondents before the learned Additional Collector, and available as Annexure-4 in Writ No. 1015, it transpires, that the case of the revisionist in this regard was as under:-

> " 3- यह कि प्रार्थीगण ने अधिनस्थ ग्राम पंचायत के समक्ष उपरोक्त भूखण्ड (प्लोट)के उनके पक्ष में विक्रय कीये जाने की प्रार्थना के साथ एक आवेदन प्रस्तुत किया जिस पर पत्रावली क्रम संख्या 5/1989-90 संस्थित की गई व विधि नियम एवम् प्रक्रिया के अन्तर्गत प्रावधित समस्त औपचारिकताऐं सम्पन्न सम्पादित की गई।
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> 4- यह कि प्रार्थीगण ने विवादित भूमि के उनके पक्ष में विक्रय किये जाने की प्रार्थना के साथ एक आवेदन प्रस्तुत किया एवम् उसके मानचित्र के लिये प्रावधित धनराशि ग्राम पंचायत में जमा कराई।
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> 5- यह कि मानचित्र के तैयार होने पर ग्राम पंचायत ने प्रस्ताव पारित कर विवादित भूमि के निरीक्षण हेतु उसके तीन पंचों को तदर्थ मनोनित किया।
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> 6- यह कि मनोनित पंचों ने प्रार्थीत विक्रय के प्रार्थीगण के पक्ष में विक्रय किये जाने के सन्दर्भ में उनका मत व्यक्त किया।
> 7- यह कि तदनन्तर अधिनस्थ ग्राम पंचायत ने विवादित भूमि विक्रय करने के लिये अस्थाई निर्णय लिया।"

Thus, the precise and categoric case of the revisionist was, that the application was filed, whereupon file no. 5 of 1989-90 was opened, and then the proceedings as pleaded were taken. While even according to the learned Additional Collector, in File No. 5 of 1989-90 there is no such reference.

That being the position, obviously the direction given by the learned Additional Collector, to decide the application, and grant Patta, can obviously not be sustained, and since the order dt. 1.5.1990 has been set aside on this ground alone, that part of the order also cannot be sustained.

Thus, as the things stand the writ petitions are required to be allowed whole hog, and the order of the learned Additional Collector is required to be, and is set aside.

However, before parting with the case it is clarified that it will be open to the present private respondents to approach the Gram Panchayat within a period of three months from today, and point out, if they have filed any application for grant of Patta of the land, of which they claim to be in possession since 1982, at any time before passing of the order dt. 1.5.1990, then the Gram Panchayat shall decide that application on merits in accordance with law. However, the interim order of this

Court dt. 26.5.1994, read with order dt. 29.1.1996, and also read with the order dt. 2.2.1996, passed in Civil Writ No. 2453/1994, in stay file shall continue for a period of three months, or till the application if pointed out by the private respondent is decided by the Gram Panchayat on merits, whichever is later.

(N P GUPTA),J.

/Sushil/